***THE HONOURABLE SRI JUSTICE P.S.NARAYANA**

+WRIT PETITION No.25348 of 2006

% 10-9-2007

Syed Salahuddin.

...

Petitioner

VS.

$ The Regional Passport Officer,
Regional Passport Office,
Near Clock Tower, Secunderabad.

...Respondent

! COUNSEL FOR THE PETITIONER: Sri Mohd. Ghulam Rasool

^ COUNSEL FOR THE RESPONDENT: -NONE-

< Gist :

> Head Note:

? CITATIONS:

1. 2005 (1) ALT 95
2. 2005 (1) ALT 751

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.25348 of 2006

Date: September 10, 2007

Between:
Syed Salahuddin.. …
Petitioner

And

The Regional Passport Officer,
Regional Passport Office,
Near Clock Tower, Secunderabad. …
Respondent

* * *

ORDER:

This Court ordered notice before admission on 06.12.2006. Heard both the counsel.

2. The writ petition is filed for a writ of *Mandamus* declaring inaction of the respondent in issuing fresh passport changing date of birth of the petitioner as 30.3.1971 instead of 22.4.1969 and insisting the petitioner to approach civil court, as illegal, arbitrary and against the principles of natural justice and pass such other suitable orders.

3. It is stated that the petitioner had completed his secondary school education in the year 1988 March. It is also stated that he was born on 30.3.1971 and the same was shown in his secondary school records. It is further stated that he obtained passport-bearing No.B5838549 showing his date of birth as 22.4.1969 instead of his correct date of birth i.e., 30-3-1971 through a passport agent on the basis of notary and the notary is not competent authority to issue date of birth certificate. It is also stated that the petitioner after coming to know the entering of wrong date of birth in the passport, immediately approached the respondent for correction of his date of birth in the passport as per his S.S.C. Memo. But, the respondent refused to do so and insisted him to obtain civil court declaratory order. It is

further stated that question of seeking declaration in civil court to amend his date of birth as per S.S.C. Memo certificate issued by the competent authority in the fresh passport arise only when he obtained earlier passport by filing any certificate issued by the Municipal Corporation or any Educational institution and again if he wants to amend the fresh passport, the declaratory decree is necessary as per clause (b) of the Circular dated 18.4.2001 issued by the Government of India.

4. I n **Mohd. Nasrullah Khan** V. **Regional Passport Officer**, **Hyderabad**[1] it was held thus:

> "In Ali Imran V. Regional Passport Officer, Secunderabad, I have considered the Circular dated 18.4.2001 issued by the Government of India in the Ministry of External Affairs pursuant to the judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications issued in the said Circular read as under.
>
> (a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA (passport issuing authority) may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.
>
> (b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, PIA may effect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the General Clauses Act, 1997, a competent authority issuing a certificate could also make necessary amendments to the same.
>
> (c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., school/educational authority and the applicant

subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case observing as under:

Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.

In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt. 18.4.2001."

5. In **Durgempudi Venkata Raghava** V. **Passport Officer**, **Ministry of External Affairs**, **Passport Office**, **Hyderabad**[2] it was held as hereunder.

"Placing reliance on the clarification issued on the aforesaid Circular, Writ Petition No.8533 of 2004 was disposed of directing the respondents to consider the representation of the petitioner along with the Secondary School Certificate issued by Secretary, Board of Secondary Education, Andhra Pradesh and pass appropriate orders in the light of the observations made in the said judgment.

It is no doubt true that the present Writ Petition was filed in the

year 1997 and the Government under Ministry of External Affairs issued the Circular referred to supra on 18.4.2001. As can be seen from the material available on record, the certificates, which had been produced before this Court, it is clear that it is only a bona *fide* mistake, which had crept in.

Apart from this aspect of the matter, no counter-affidavit had been filed denying the specific averment made in the affidavit filed in support of Writ Petition that along with the application form for passport, the Travel Agent also enclosed copies of S.S.C. certificate, Intermediate certificate and also Degree certificate. Therefore, it is evident that without verifying the date of birth, the respondent authority just took the date of birth as filled up in the application form and issued the passport. Hence, it is needless to say that it is only a bona fide mistake.

The learned Senior Standing Counsel for Central Government, no doubt submitted that in such a situation, if the passport was issued prior to the said circular it would be proper to give an opportunity to the Writ Petitioner to file fresh application for issuance of passport to the competent authority.

In the light of the facts and circumstances, especially in view of Clause (a) of the Circular, dated 18.4.2001 referred to supra and also in view of the fact that all these copies of documents also had been produced at the time of filing of the application form but a *bona fide* mistake had crept in, the Writ Petition is disposed of with the following directions."

6. In the light of the Circular and also the decisions referred to supra, this Court is of the considered opinion that the action of the respondent cannot be sustained and in view of the same this court is inclined to dispose of the writ petition directing the respondent to receive application of the petitioner for the purpose of relief prayed for in the writ petition and also consider the same and dispose of the same in accordance with law in the light of the Circular referred to supra and also the decisions specified above within a period of four weeks from the date of receipt of this order.

7. The writ petition is disposed of accordingly. No order as to costs.

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(P.S.NARAYANA, J.)

Date: September 10, 2007.
BSB
L.R. Copy to be marked.

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[1] 2005(1) ALT 95

[2] 2005 (1) ALT 751